

SENATE NO. 774

AN ACT TO ADOPT PROTECTIONS FOR LOWELL'S GOVERNMENTALLY INVOLVED HOUSING STOCK.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Whereas, a serious public emergency exists with respect to the housing of citizens in
2 Lowell residing in governmentally-involved housing, inasmuch as there is a threat that many low-
3 income individuals and families residing in such housing, particularly those elderly and disabled, may
4 be threatened with displacement as a result of prepayment of mortgage financing, loss of use
5 restrictions, expiring subsidy contracts, and expected increases in rent, and there is a threat that
6 affordable housing stock will be lost due to expiration of use restrictions and subsidy contracts and
7 such pre-payment, further exacerbating an extreme housing shortage within the city for low-income
8 families and voters, and whereas, in approving Chapter 40 P of the General Laws, the voters did not
9 exempt such housing from protection or regulation and whereas it is the city's policy to encourage
10 owners of this governmentally-involved housing to accept incentives to keep such housing affordable
11 and avert displacement, that such emergency should be met by the city of Lowell immediately;
12 therefore, this act is declared to be in the public interest.

13 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the contrary,
14 including, without limitation, the provisions of chapter forty P of the General Laws and chapter 282 of

15 the Acts of nineteen hundred and ninety-four, for so long as the City Council of Lowell shall
16 determine that the circumstances described in section one hereof continue to exist, the City of Lowell
17 shall by ordinance regulate the rent for use or occupancy of governmentally-involved or formerly
18 governmentally-involved housing to the extent such regulation is not preempted by federal law or by
19 section six of chapter 708 of the Acts of nineteen hundred and sixty-six as amended, once the basis for
20 federal or state rent regulation or preemption no longer exists. For purposes of this act,
21 “governmentally-involved housing” is defined as housing units which the United States, the
22 Commonwealth or any authority created under the laws thereof (i) insures the mortgage thereon, or
23 owns, operates, finances, or subsidizes such housing units, and (ii) regulates the individual rents
24 thereof, including without limitation housing units constructed or rehabilitated pursuant to Section 202
25 of the Housing Act of 1959, as amended (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National
26 Housing Act, as amended (12 U.S.C. §§ 1715l(d) or 1715z-1), Section 811 of the Cranston-Gonzalez
27 National Affordable Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of
28 the Acts of nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen
29 hundred and seventy, as amended (M.G.L. c. 23A App. § 1-13A), or housing units financed or
30 subsidized pursuant to project-based programs for low-income persons under Section 8 of the United
31 States Housing Act of 1937, as amended (42 U.S.C. § 1437f) or the project-based Massachusetts
32 Rental Voucher Program, so-called (see line item 7004-9004 of Section 2 of chapter 159 of the Acts of
33 two thousand, as well as 760 C.M.R. Part 49.00), but not including the following:-

- 34 (1) housing units owned or acquired by the City of Lowell through tax foreclosure;
- 35 (2) housing units in a building or structure of fewer than twenty-five units which are not part of
- 36 a larger housing development, whether on one or more sites;

37 (3) structures containing housing units subsidized with mobile tenant-based rental assistance
38 that would not otherwise come within the definition of governmentally involved housing;

39 (4) public housing owned or operated by the Lowell Housing Authority under chapter 121Bf
40 of the General Laws, the United States Housing Act of 1937 (42 U.S.C. §§ 1437a et seq.), or any
41 successor act or public housing programs formerly assisted under the United States Housing Act of
42 1937;

43 (5) housing units where the sole government involvement is the owner's participation in
44 federal, state, or municipal funded programs for home repairs, energy conservation, or lead paint
45 abatement.

46 (6) housing units which become governmentally involved after January 1, 2002;

47 For the purpose of this act, "formerly governmentally-involved housing" is defined as housing
48 which was governmentally-involved housing as of July 1, 1998, or which becomes governmentally-
49 involved housing after July 1, 1998, but which then no longer is owned, operated, financed,
50 subsidized, mortgage-insured, or rent-regulated by the United States, the Commonwealth, or any
51 authority created under the laws thereof, provided that "formerly governmentally involved housing"
52 shall include any housing receiving subsidy under Section 8(t) of the United States Housing Act of
53 1937 (42 U.S.C. § 1437f(t)).

54 For the purpose of this act, "low-income" is defined as annual household income which is
55 eighty per cent or less of the median income for the area as determined by the United States
56 Department of Housing and Urban Development, with adjustments for smaller and larger families.

57 The City of Lowell shall by ordinance create an official body to establish as the maximum
58 rent for the governmentally-involved and formerly governmentally-involved housing units the rent in
59 effect therefor on July 1, 1998 or six months before the basis for federal or state rent regulation or

60 preemption lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income
61 as of the date of the official body's decision, provided, however, said ordinance shall authorize the
62 official body to make individual adjustments in such maximum rents as may be necessary to remove
63 hardships or to correct other inequities. In making individual adjustments to remove hardships or to
64 correct other inequities, the official body shall observe the principle of maintaining maximum rents for
65 such housing units at levels which will yield to owners a fair net operating income from such housing
66 units. In determining whether the maximum rent for such housing units yields a fair net operating
67 income, due consideration shall be given to, among other relevant factors: (1) increases in property
68 taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major capital
69 improvement of the housing units, distinguished from ordinary repair, replacement, and maintenance;
70 (4) increases or decreases in living space, services, furniture, furnishings or equipment; and (5)
71 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to perform
72 ordinary repair, replacement, or maintenance.

73 (B) Such ordinance shall provide that no person shall bring an action to recover possession of a
74 governmentally-involved housing unit, or of a formerly governmentally involved housing unit, to the
75 extent that such regulation is not otherwise preempted by federal law or section six of chapter 708 of
76 the acts of nineteen hundred and sixty-six as amended, unless:

77 (1) the tenant has failed to pay the rent to which the owner is entitled;
78 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with chapter 93A of
79 the General Laws or this act other than the obligation to surrender possession upon proper notice, and
80 has failed to cure the violation after having received written notice thereof;

81 (3) the tenant is causing, committing, or permitting a nuisance in, or substantial damage to, the
82 housing unit, or is creating substantial interference with the comfort, safety, or enjoyment of the owner

83 or other occupants of the same or any adjacent unit;

84 (4) the tenant has used or permitted use of a housing unit for illegal purposes;

85 (5) the tenant, who had a written lease or rental agreement which has terminated, has refused,
86 after written requests or demand by the owner, to execute a written extension or renewal thereof for a
87 further term of like duration on terms not inconsistent with or violative of any provision of this act;

88 (6) the tenant has refused the owner reasonable access to the housing unit for the purpose of making
89 necessary repairs or improvements required by law, or for the purpose of inspection as permitted or
90 required by the lease or law, or for the purpose of showing the housing unit to any prospective
91 purchaser or mortgagee;

92 (7) the tenant holding at the end of a lease term is a subtenant not approved by the owner; or

93 (8) the owner seeks to recover possession for any other just cause not in conflict with the
94 provisions and purposes of this act or chapter 93A of the General Laws.

95 The provisions of this section shall be construed as additional restrictions on the right to recover
96 possession of such housing units.

97 (C) Such ordinance shall also provide that no person shall remove any governmentally-
98 involved or formerly governmentally-involved housing accommodation from low-income rental
99 housing use (including but not limited to sale, lease, or other disposition of the property which may
100 have such an effect), or convert such property to a condominium or cooperative, without first
101 obtaining a permit for that purpose from the official body, to the extent that such provision is not
102 preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and sixty-six as
103 amended. Such permit may be subject to terms and conditions not inconsistent with the purposes and
104 provisions of this act, including, without limitation, (a) incentives to continue in effect the low-income
105 restrictions previously in place for the property and (b) where sale, lease, or disposition of the property

106 may result in the loss of all or a portion of the property for low-income rental housing use, the right of
107 an incorporated tenants association in such housing, the city of Lowell, the Lowell Housing Authority,
108 or non-profit community development corporations to negotiate for, acquire and operate such property
109 on substantially equivalent terms and conditions as offered or available to a bona fide third-party
110 purchaser.

111 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts of
112 nineteen hundred and sixty-six as amended, such ordinance shall require that owners of
113 governmentally-involved housing, or formerly governmentally involved housing, affirmatively seek
114 out and accept any prospective governmental housing resources, whether tenant-based or project-
115 based, which maximize affordability of the housing units consistent with the income character of the
116 property and the owner's right to obtain a fair net operating income for the housing units, provided
117 that the City shall assist owners by identifying such governmental housing resources.

118 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts of
119 nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with the
120 owner's right to obtain a fair net operating income, such ordinance shall also provide that the City may
121 establish local preferences, priorities, and income limits for admission to governmentally-involved
122 housing or formerly governmentally-involved housing upon unit turnover, consistent, to the extent
123 practicable, with the income profile of the property twelve months prior to the date of the loss of rent
124 preemption or the decision to not renew an expiring subsidy contract. The official body may approve
125 an alternate plan requested by the owner, consistent with the provisions of this Act. No ordinance or
126 regulation shall require an owner to create a tenancy involving any person with a history of conduct
127 which would, if repeated, be grounds for eviction from such housing.

128 (F) Such ordinance shall also provide that the official body may grant exemptions and
129 exceptions to the general provisions of this act when such action would tend to maintain or increase
130 the supply of affordable housing in Lowell, including, without limitation, promoting the sale of
131 properties to bona fide tenant organizations or non-profit community development corporations under
132 terms and conditions which would tend to maintain the income character of the property.

133 (G) Such ordinance shall provide that the official body may promulgate such rules,
134 regulations and orders as it may deem necessary to effectuate the purposes of this act and the
135 ordinance. The board may hold hearings on any matters within its authority under this act and
136 ordinance. Any hearings regarding matters related to regulation of rents or removal permits for
137 governmentally involved or formerly governmentally involved housing or regarding compliance with
138 other provisions of this act, or the ordinance, orders, rules, or regulations adopted or promulgated
139 hereunder, shall be conducted by the official body in accordance with the provisions of section eleven
140 of chapter thirty A of the General Laws except that requirements (7) and (8) of such section eleven
141 shall not apply to such hearings.

142 (H) All decisions of the official body may be appealed to the housing court department of the
143 trial court, Northeast Division, by any person aggrieved thereby, whether or not previously a party in
144 the matter, within thirty calendar days after notice of such decision. Judicial review of adjudicatory
145 decisions shall be conducted in accordance with section fourteen of chapter thirty A of the General
146 Laws. Judicial review of regulations shall be conducted in accordance with section seven of chapter
147 thirty A of the General Laws. The housing court department of the trial court, Northeast Division,
148 shall have jurisdiction to enforce the provisions hereof and any ordinance, rule or regulation adopted
149 hereunder, and on application of the board or any aggrieved person may restrain or enjoin violations of
150 any such ordinance, rule, or regulation. In the interests of justice, the court may allow any necessary

151 parties to be joined in or to intervene in any action brought hereunder and may in its discretion allow
152 or require an action to proceed as a class action.

153 SECTION 3. It shall be unlawful for any person to do or omit to do any action in violation of
154 this act, or any order, ordinance, rule or regulation adopted or promulgated hereunder. Whoever
155 willfully violates any provision of this act or any order, ordinance, rule or regulation adopted or
156 promulgated hereunder or whoever makes a false statement in any testimony before the board or its
157 agents, or whoever knowingly supplies the official body with false information shall be punished by a
158 fine of not more than four hundred dollars or by imprisonment for not more than ninety days, or both;
159 provided, however, that in the case of a second or subsequent offense, or where the violation continues
160 after notice thereof, such person shall be punished by a fine of not more than two thousand dollars, or
161 by imprisonment for not more than one year, or both.

162 SECTION 4. The provisions of this act are severable, and if any of its provisions shall be held
163 unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court
164 shall not affect or impair any of the remaining provisions.

165 SECTION 5. The provisions of M.G.L. c.40P shall not apply to any ordinance adopted under
166 this enabling authority.

167 SECTION 6. This act shall take effect upon passage.